R. D. File No. 217

1939.

Collection No.

Mysore Residency

CB 21/7 mas 21/7

(W)

P25

Pros. Serial Nos. 1 – 6

S.No.586

Dept

Police

Subject.

Amendment of the Bangalore Municipal Law, 1897. — Control of advertisements.

Previous References.

Later References.

R.D. 18/41.

(P: See R.D. 68/41 – Scale of fees for advt: permits – under Police Law.)

14/11/46

S. 97.—(Green).

MFP—1663 S&P—(M-2971)—24-6-38—100,000.

1 The proposal is to insert a new section in Chapter V of the Municipal Law, regulating advertising in the Station, and to amend the section conferring the power to frame bye-laws, so that details giving effect to the new provision may be worked out in the form of bye-laws. Please see the proposed section 98-A. It lays down an injunction prohibiting persons from advertising without paying the requisite fee and obtaining a license. When an Act lays down a prohibition, action in violation of it constitutes an offence, and a penalty will have to be laid down. For no prohibition is effective unless a penalty is provided. As the section stands, a new offence will have been constituted, and the penalty therefor must be looked for in the Act itself. Chapter VI provides penalties for various offences affecting public health, safety or convenience; but any of those penalties cannot be invoked for persons erecting or exhibiting advertisements without licenses as required by section 98-A. The intention apparently is to provide the penalties in the bye-laws. But it appears it may be taken as a general rule that when an Act lays down a prohibition, the penalty for the breach of it ~~must~~ must be found in the Act itself, and for such prohibitions as are competent to be laid down under bye-laws or rules, penalties must be found in such bye-laws or rules.

2 It is quite true that the power to levy a license fee must be conferred by the Act itself, and that is the reason why it has been considered insufficient merely to amend section 137 by adding in the proper place the words "and for the regulation and control of advertisements". But it appears that instead of scattering the provisions, it would be better to insert the provision only under section 137, providing for the making of bye-laws for the regulation

regulation and control of advertisements and also empowering the Commission to levy a license fee. Please see clause (a) of section 137(1). Then the bare power will have been duly conferred by the Act, and the necessary working details to give effect to the new provision can be embodied in the bye-laws: providing both prohibition and penalty.

3. Then there is one more important point. When the time comes to put the bye-laws into operation, it will be discovered that the tardy process of prosecution will not be sufficient to combat the evil of persons advertising without paying the requisite fee and obtaining the license. At any rate the offending advertisement will be on view with impunity while a prosecution for exposing it to view will be proceeding. In respect of numbering and registration of motor vehicles, and selling or exposing articles for sale in public streets, it was considered that the most effective method to deal with defaulters was seizure. It appears to be well to be armed with that power, which can obviously be by the necessary provision in the Act itself.

4. The following draft is suggested in the light of the points raised in these notes:

In section 137(1), after clause (a) insert -

"(aa) regulate and control advertisements by providing that subject to such exemptions as may be prescribed, licenses are necessary to erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, moveable board or object, or structure any advertisement, or display any advertisement to public view in any manner whatsoever, in any place whether public or private, within the Station, and may

(i) fix the fees payable for such licenses at such rates and in such manner as it may determine, and

(ii) on such breach as may be prescribed, provide for removal of such advertisement and for entry into any building, land or property for the purpose".

* exemptions from obtaining license as against from payment of fees has not been inserted, as verbally directed by Secretary.

26/1/39.

Secretary.

25.1.39

P7C010

(from para 3

3

President, Municipal Commission, Ctr. Station, Bangalore

U.O. No. D. 498-39/R.O.I, dated the 26th Jan. 1939

MUNICIPAL OFFICE
No. 1450/38
27 JAN 1939
CIVIL & MILITARY STATION, BANGALORE

5 I agree that the proposed new section 98-A should provide for a penalty. The new section would however be included in Chapter V and Section 161 would be attracted if the new Section 98-A provided for the issue of a notice. On further consideration, however, I agree it is better to make the proposed amendment by adding a clause to Section 137. But there is no need to import into Section 137 all the terms of the proposed Section 98-A. The new clause in Section 137 might run as follows :-

> "137 (1) (aa). Regulate and control advertisement on any land or building or in any place whatsoever whether public or private by means of licenses subject to such exemptions as may be prescribed, and provide for the levy of fees for such licenses and for the removal of unlicensed advertisements.

6 All the detailed requirements may be brought into effect by means of bye-laws.

1 The additional clause might go in as 137 (1) (bb) or (cc), preferably the latter.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
9 FEB. 1939
Diary No. 1403
File No.

7.2.39

9.2.39

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U.O. No. 1450/38. dated 7th February 1939.

8 The proposed amendment has been greatly simplified and appears to entirely meet the purpose. Two changes in substance, however, are noticeable: (1) It is provided that the power of removal can be exercised only in respect of unlicensed advertisements. The bye-laws will almost certainly provide that when a license has been obtained, a receipt or some other token must be obtained and prominently exibited on the advertisements. Please see section 7, bye-law No.3 - Chapter III. The proprietors of cinema houses parade huge advertisements of pictures round and round the streets of Bangalore, and if one such does not bear any indication of having been licensed, and is seized on that account it would prove to be wronful removal if it were subsequently discovered that it had been duly lincensed. A similar power of seizure of a vehicle for not affixing the municipal number only notwithstanding the fact that the vehicle has been duly licensed was considered necessary. It was for this reason that the sub clause had been proposed, "on such breach as may be prescribed, provide for removal - - -" (2) what is provided for is the removal of unlicensed advertisements. Seizure and removal of an advertisement from a road or other public place is different from entering private premises for the purpose of removal. Please see sections 131 to 136 of the Municipal Law. It seems to be arguable whether the power of mere removal carries with it the power of entry into a private place. Or it may be it has been considered that in respect of an unlicensed advertisement in a private place, prosecution is sufficient and power of removal is not necessary.

9 P.M.C's suggestions that the new clause should be numbered as (cc) and not as (aa) may be accepted.

10 Draft to the Political Department is submitted for approval.

ASRao
13.2.39
Secretary.

(from para 5)

11 Draft as follows:

for the removal of advertisements displayed in contravention of the bye-laws made under this clause and for the entry by an officer authorized by the Commission into any land building or property for the purpose of such removal

or in some such manner. Then file can go to PMC for agreement.

21/2/39

12 The following draft is submitted for approval:

"(cc) regulate and control advertisement on any land or building or in any ~~manner~~ place whatsoever whether public or private by means of licenses, subject to such exemptions as may be prescribed, and provide for the levy of fees for such licenses, for the removal of advertisements displayed in contravention of such bye-laws, and for ~~the~~ entry by the Commission, by any person authorised by it in this behalf, into any land or building for the purpose of such removal."

21.2.39

13 For agreement of PMC

Secretary.

21/2/39

PMC U/O

MUNICIPAL OFFICE No. 1450/38 23 FEB. 1939 EAST STREET

President, Municipal Commission, Chr. Shahi, B'h
U/O No. D - 1403-39/R.O.I, dated 27th Feb '39

6

14

12

The two changes proposed in ~~my~~ draft are

(1) Substitution of the words "Removal of advertisements in contravention of such bye-laws" for "Removal of unlicensed advertisements".

(2) addition of a new clause at the end providing for entry into the premises.

2. I accept item (1) which is an improvement.

3. Item (2) is I think unnecessary. Power of removal must imply power of entry. Compare Section 140(3), under which we dismantle unauthorised and objectionable buildings; in this important section the power of entry is implied in the power to cause an act to be done. Compare also sections 91, 92 and 186(c). It is always better to avoid special authorisations if possible. The draft may end with "in contravention of such bye-laws".

g.f.c

11.3.39

9.3.39

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
11 MAR. 1939
Diary No. 2544
File No.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U/O No: 1450/38 dated 9th March 1939.

15 Reference paragraph 14(3) ante.

It is submitted that it seems necessary to provide for the entry into the premises for removing the advertisement. The Bangalore Municipal Law, 1897, is rather antiquated and is not therefore a proper precedent; but even in that Law specific provision has been made legalising the entry of the officers of the Commission ~~xxxxx~~ into private premises for certain purposes, viz. sections 131 to 136. The purposes detailed in those sections may not be comprehensive enough and a general provision on the lines of section 378 of the Madras City Municipal Act, 1919, would have been better.

p.203 Madras Acts.

16 The strongest argument in favour of retaining the provision regarding entry into ~~private~~ premises, is that there is a provision to that effect in the section relating to removal of advertisements in the Madras City Municipal Act - vide section 129.E. Since one of the reasons adduced by the P.M.C. for amending the Bangalore Municipal Law in order to provide for the control of advertisements was that there was provision in the Madras Act, it is reasonable to hold that a principle given effect to / ~~recognised~~ in ~~by~~ section 129-E of that Act should be followed here also. Further there is general provision legalising entry into premises in the Mysore City Municipalities Act, 1933 - S.19(

p.37 India & Madras Acts, 1936.

vide.para 3 PUC.

17 In the absence of specific provision permitting the Commission to enter premises, it will not strictly be correct to enter, except in pursuance of an order of a competent court.

18 Clean drafts are submitted. Subject to approval the ~~draft~~ clause suggested in para 12 ante has been copied in the draft notification.

Secy. 7.4.39 19 May as well be put in no harm For approval.

Asst. Resident 15-6-Pg

Dy. Secy

S.N.(2)

8/4/39.

Issue

21 It is submitted that it appears the power of entry and removal of advertisements displayed in contravention of bye-laws is not implicit in clause (cc) as modified and issued by the Crown Representative. An examination of the provisions of the Municipal Law will reveal this, and there is no need to support or strengthen the argument by referring to other Acts (including the provisions of the Madras City Municipal Act, on which the present amendment was based) where the power of entry or seizure has been explicitly conferred.

22 Firstly, please see section 137 and the various clauses under it. It lays down that the Commission may make bye-laws regarding certain things mentioned in that section. The effect of the present amendment is that the Commission may by bye-laws provide for the regulation and control of advertisements. A provision of law containing a direction or prohibition is effective only when there is a penalty prescribed for its breach. The question is what is the penalty that the bye-laws can prescribe in the present case. Can they prescribe the removal of the offending advertisements and entry into private lands or buildings for that purpose? The answer seems to be definitely in the negative. Please see section 138. The Commission in making any bye-law can only direct that a breach of it shall be punishable with fine which may extend to fifty rupees, and a further fine in the case of a continuing breach. The Political Department appear to have over-looked section 138. Normally, perhaps, a power of control covers the penalty of entry or seizure: but certainly not when the

Law definitely says that if a penalty is prescribed in the bye-laws for the contravention of any of them it shall be a fine and nothing more, and even the limit of the fine is prescribed.

23

Cor p. 30
S.N. 10
F. 1273-35

(P)

The second point in support of this interpretation is the Notification of the Political Department No. 184-I.B, dated the 26th August 1937. Providing by bye-laws for the numbering and registration of ~~whicles~~ vehicles was considered by the Political Department incapable of carrying with it the power of seizure and they amended the law at the instance of this Residency.

S N. 9
Cor p. 25 -do-
24

It may be argued that "Control" is a wider expression and connotes more. But please see then 137 (e) (vii) which provides for the control of premises used for any of the purposes mentioned in section 103. If this provision regarding control carried with it the power of entry, there was no need for section 136 in the Law. Then again, the fact that powers of entry have been specifically conferred as regards a few provisions, leads to the view that powers of entry or removal as regards other provisions must only be explicitly conferred and it cannot be considered that they are implied.

25

If approved President, Municipal Commission may be requested to kindly advise whether the matter should be taken up with the Political Department or dropped. Submitted for orders.

ASRao
1.6.39

(from para 21)

Secretary 26. The Political Dept's ruling must be accepted.

4/6/39.

27. The Notification may, as usual, be republished in the Residency Orders. Draft submitted.

ASRao 5.6.39

(para 27)

6.6.39.

S.N.4 Issue.

Dy.No. 7711 S.N. 5

It is regretted that a copy of the Notification was not sent to the P.M.C. by oversight. But still if the Municipal Office had watched the issues of the Residency Orders, they would have noted the notification of the Political Department republished therein.

Draft submitted.

ASRao 1.8.39

2.8.

(from para 25)

S.N. (6): Issue.

Record

ASRao

L1

5-3,000-4-8-1937.

No. 1450/38

S. N. 1

CIVIL AND MILITARY STATION, BANGALORE.
MUNICIPAL OFFICE.

Dated. 14th January, 1939.

From

C. F. V. WILLIAMS, ESQ., I. C. S.,

President, Municipal Commission,

Civil and Military Station, Bangalore.

To

The Secretary to the Hon'ble the ~~Resident in~~ Mysore,

BANGALORE.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
16 JAN
Diary No. 498
File No.

Received on 19-1-39.

SIR,

I have the honour to state that the question of establishing effective control over advertising in the Station has long been engaging the attention of the Municipal Commission. There have also been representations from Commercial interests asking for proper facilities for tradespeople to advertise their goods.

2. At present there is no direct provision in the Bangalore Municipal Law for the control of advertisements. Use has been made of Section 137 (1) (e) (ii), which refers to the disfigurement of any building or wall adjoining a street, and under that clause and the next following clause Bye-law No.15 Chapter III has been framed. Sections 2 and 3 of the Bye-law deal with advertisements.

page 43 of the Muni. Law

page 83 of Bye-laws.

3. The Municipal Commission have now come to the conclusion that if advertising is to be effectively controlled it is necessary to embody specific provisions in the Bangalore Municipal Law, on the lines of municipal legislation elsewhere. The Madras City Municipal Act provides for the taxation, control and regulation of advertisements in the City of Madras (Sections 129-A to 129-F of the Act) and also for making the necessary Bye-laws (Section 349 of the Act). The Mysore City Municipalities Regulation, 1933, also provides for the control of advertisements vide Section 139 of the Regulation.

put up

put up

4. At a Special Meeting on the 21st December, 1938, the Municipal Commission unanimously recommended that the following amendments should be made to the Bangalore Municipal Law:-

(i) Add the following as Section 98-A:-

"Advertising"

"No person shall erect, exhibit, fix or retain upon any land, building, wall, hoarding, moveable board or object or any structure whatsoever or display any advertisement to public view in any manner whatsoever in any place whether public or private without a license from the Municipal Commission. The Commission may charge a fee for such license at such rates and in such manner and subject to such exemptions as it may determine".

(ii) Add the following at the end of Section 137 (1) (e) (ii):-

"and for the regulation and control of advertisements".

5. The proposed new section 98-A has been framed on the lines of Section 129-A of the Madras City Municipal Act. It establishes two principles, that advertisements shall be licensed, and that a fee shall be paid for the license. The licensing of all advertisements will require additional establishment the cost of which will be provided by the fees levied.

6. It will of course be necessary to frame Bye-laws to give effect to the new section.

7. I request that the Hon'ble the Resident may be pleased to move His Excellency the Crown Representative to amend the Bangalore Municipal Law on the lines proposed. I also request that the matter may be dealt with urgently, in order that the new Bye-laws under the proposed section may be brought into force with effect from 1st April, 1939.

I have the honour to be,
Sir,
Your most obedient servant,

PRESIDENT, M.C.

HB.
12/1/1939.

Issue file 10.4.39

S.N.2

3

R.Dis.No.F.217/39/Judl. 19/4/1939

From

The Resident.

To

The Secretary to H.E. the
Crown Representative.

Amendment of the Bangalore Municipal Law,1897.
Control of Advertisements.

—

Sir,

The Municipal Commission, Civil and Military Station, Bangalore, desire to establish effective control over advertising in the Station. Provision is made in other Municipal Acts such as the Madras City Municipal Act, 1919, for this matter. I request the sanction of His Excellency the Crown Representative to the issue of the enclosed draft notification amending the Bangalore Municipal Law,1897.

I have etc.,

19

Resident.

(Approved by Resident on 10.4.39)

Issued ICS 19/4/39

fc

(Approved by Resdt. on 10.4.39)

4

No. Dated

POLITICAL DEPARTMENT

—

NOTIFICATION

—

In exercise of the powers conferred by the Indian(Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Bangalore Municipal Law,1897, namely:-

After clause (c) of sub-section (1) of section 137 of the said Law, the following clause shall be inserted, namely:-

"(cc) regulate and control advertisement on any land or building or in any place whatsoever whether public or private by means of licenses, subject to such exemptions as may be prescribed, and provide for the levy of fees for such licenses, for the removal of advertisements displayed in contravention of such by-laws, and for entry by the Commission, by any person authorised by it in this behalf, into any land or building for the purpose of such removal".

Secretary to His Excellency
the Crown Representative

S.N. 3

15

No.F.122-I.B./39.

From

The Secretary to His Excellency the
Crown Representative,

To

The Hon'ble the Resident in Mysore.

Dated Simla, the 16th May 1939.

Amendment of the Bangalore Municipal Law, 1897, for the control of advertisements.

- - - -

Sir,

S.N. 2
Cor. p. 3.

I am directed to refer to your letter No.R.Dis.No. F.217-39/Judl., dated the 19th April 1939, and to forward a copy of a notification by this Department No. 134 - I.B., dated the 16th May 1939. The draft notification received with your letter was slightly modified for the reason that the power to enter any private land or building or place and remove advertisements displayed in contravention of the bye-laws is implicit in the power of control and is conferrable by the prescribed bye-laws and there is no need to mention it explicitly.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
23 MAY 1939
Diary No. 5275
File No. RA-217-39

25.5.39

I have the honour to be,
Sir,
Your most obedient servant,

for Secretary to His Excellency the
Crown Representative.

16

No. 134 - I.B.

Political Department.

Dated Simla, the 16th May 1939.

- - - - -

NOTIFICATION.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Bangalore Municipal Law, 1897, namely :-

After clause (c) of sub-section (1) of section 137 of the said Law, the following clause shall be inserted, namely :-

"(cc) provide for the regulation and control, by means of licences, of advertisements on any land or building or in any place, whether public or private, and for the levy of fees for such licences".

Sd/ C. Latimer,

Secretary to His Excellency the Crown Representative.

Issued 16/6/39 Ps.

Issue 6/6

To be published in the Residency Orders

No 58.

The Hon'ble the Resident in
Mysore.

Pols. No. 217/39 Dated, Bangalore, the 16th June 1939.

Notification.

The following Notification of the Political Department is republished.

for Secretary to the Reside

(Here enter Notification No.134-I.B./39, dated the 16th May 1939.)

Residency Press.

Please suply 50 spare copies.

encl to P.U.C
page 6

10 S.C. Lists & Pills.-C.

Asst 5.6.39

THE HON'BLE THE RESIDENT IN MYSORE.

NOTIFICATION.

No. 58, dated Bangalore, the 16th June 1939.

The following notification of the Political Department is republished :—

A. J. COURTNEY,
for *Secretary to the Resident.*

No. 134-I.B.

POLITICAL DEPARTMENT.

NOTIFICATION.

Dated Simla, the 16th May 1939.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Bangalore Municipal Law, 1897, namely :—

After clause (*c*) of sub-section (1) of section 137 of the said Law, the following clause shall be inserted, namely :—

"(*cc*) provide for the regulation and control, by means of licences, of advertisements on any land or building or in any place, whether public or private, and for the levy of fees for such licences."

C. LATIMER,
Secretary to His Excellency the Crown Representative.

241 (1)—26-6-1939—50—RPB.

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NOTIFICATION.

No. 58, dated Bangalore, the 16th June 1939.

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(*cc*) provide for the regulation and control, by means of licences, of advertisements on any land or building or in any place, whether public or private, and for the levy of fees for such licences."

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After clause (*c*) of sub-section (1) of section 137 of the said Law, the following clause shall be inserted, namely:—

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"(*cc*) provide for the regulation and control, by means of licences, of advertisements on any land or building or in any place, whether public or private, and for the levy of fees for such licences."

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C. LATIMER,
Secretary to His Excellency the Crown Representative.

241 (1)—26-6-1939—50—RPB.

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Secretary to His Excellency the Crown Representative.

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241 (1)—26-6-1939—50—RPB.